IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 4275 of 1996(H)

PETITIONER:

T.KRISHNAN NAIR, GLASS MERCHANT,
BROADWAY, ERNAKULAM.

ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. TAHSILDAR, KANAYANNOOR TALUK, ERNAKULAM.

3. VILLAGE OFFICER, ERNAKULAM VILLAGE, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER OF THE SECOND RESPONDENTS BEARING NO.B3/8023/95 DATED 4..9.1995.
EXT.P2	TRUE COPY OF THE DEMAND NOTICE ON THE BASIS OF EXT.P1 DATED 4.9.1995
EXT.P3	TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DATED 31.10.1995.
EXT.P4	TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT DATED 23.12.1995.
EXT.P5	TRUE COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT DATED 1.3.1996.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 4275 OF 1996 H

Dated this the 9th August, 2007

JUDGMENT

H.L.DATTU, C. J.

The petitioner has constructed a three storeyed building in a plot of land measuring 6.46 cents in Sy.No.662/1 and 662/7 in Ward No.40 of Cochin Corporation.

2. The Tahsildar, who is the competent authority under the provisions of the Kerala Building Tax Act, has completed the assessments and has levied building tax in a sum of Rs.51,000/-. Without questioning the correctness or otherwise of the same before the authorities provided under the Statute, the petitioner has approached this Court for the following reliefs:

> "i) to quash the orders of assessment passed by the assessing authority/Tahsildar;
>
> ii) to strike down Section 5(2) of the Kerala Building Tax Act;
>
> iii) to strike down Sections 11(1) and 13(4) of the Kerala Building Tax Act insisting on pre-deposit of tax to maintain an appeal or revision."

3. In so far as the first prayer is concerned, in our view, if for any reason, the petitioner is aggrieved by the orders passed by the Tahsildar under the provisions of the Kerala Building Tax Act, he has got a right of appeal and a revision before the various forums created under the Statute itself. Therefore, the first relief sought for by the petitioner cannot be

granted by us.

4. In so far as the second prayer is concerned, the same requires to be granted in view of the law laid down by this Court in **Shirly** v. **State of Kerala** (2006(2) KLT 306). Accordingly, the provisions of Section 5(2) is struck down on the ground that the same is arbitrary and violative of the constitutional provisions.

5. In so far as the third prayer is concerned, the appeal and revisional remedies are provided under the Act before the various forums created under the Statute itself. The various forums created under the Statute can definitely impose certain conditions to avail those remedies. In that view of the matter, the third prayer sought for in the Original Petition also cannot be granted by us. Therefore, we pass the following:

O R D E R

1) The Original Petition is disposed of.

2) If for any reason, the petitioner is aggrieved by the orders of assessment passed by the Tahsildar under the provisions of the Kerala Building Tax Act, he is permitted to prefer an appropriate appeal before the Appellate Authority within thirty days from today. If such an appeal is filed within the time granted by this Court, the Appellate Authority shall consider the same on merits without reference to the period of limitation.

3) Provisions of Section 5(2) of the Building Tax Act is struck down by following the dicta of this Court in 2006(2) KLT 306 (supra).

3) The prayer No.3 is rejected.

4) In the facts and circumstances of the case, parties shall bear their costs.

Consequent to the order passed in the Original Petition, C.M.P.No.7555 of 1996 is dismissed.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.NO. 4275 OF 1996 H

JUDGMENT

9th August, 2007